Supreme Court, U.S.
FILED

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No. 02 1396 DEC 24 2002

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In The
Supreme Court of the United States

NAIDA B. AXFORD, ESQ.,

Petitioner,

vs.

ARIZONA SUPREME COURT, and the STATE BAR OF ARIZONA, and the STATE BAR FOUNDATION,

Respondents.

MARK G. SANCHEZ and the PEOPLE OF ARIZONA,

Parties in Interest.

On Petition For Writ Of Certiorari To The Supreme Court Of Arizona

PETITION FOR WRIT OF CERTIORARI

NAIDA B. AXFORD, ESQ.
1087 East Minton Drive
Tempe, Arizona 85282
(480) 600-4282
Counsel for Petitioner

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QUESTIONS FOR REVIEW

1. HAS THE ARIZONA SUPREME COURT LOST ITS FORMER STATUTORY AUTHORITY TO GOVERN THE "PRACTICE OF LAW"?

2. DO THE PRIVATIZATION AND SPECIAL INTERESTS OF THE STATE BAR OF ARIZONA CONSTITUTE SUCH IDEOLOGICAL TIES TO THE MARKETPLACE OF LAWYERS AS TO VIOLATE THE FIRST AMENDMENT RIGHTS OF ATTORNEYS LICENSED TO PRACTICE IN THOSE COURTS UNDER ADMINISTRATION OF THE SUPREME COURT OF ARIZONA?

3. HAS THE ARIZONA SUPREME COURT VIOLATED ITS DUTIES TO PETITIONERS AND THE REAL PARTIES IN INTEREST BY CONTINUING TO IGNORE AXFORD'S DIPLOMATIC, LAWFUL AND PEACEABLE ASSERTIONS OF PROTECTED RIGHTS UNDER THE FIRST, FOURTH, SIXTH AND FOURTEENTH AMENDMENTS?

4. HAVE THE PROPERTY AND LIBERTY INTERESTS IN A LICENSE TO PRACTICE LAW, AND THE TYING ADMISSION TO THE FEDERAL DISTRICT AND APPELLATE COURTS REQUIRING STRICT SCRUTINY OF ANY AND ALL REGULATION, AND FULL EVIDENTIARY PRE-TERMINATION HEARINGS IN DISCIPLINARY AND OTHER LICENSURE MATTERS AS WELL AS RIGOROUS STANDARDS OF DUE PROCESS, APPOINTMENT OF COUNSEL, AND PROTECTION FROM POLITICAL AND ECONOMIC ABUSE, BEEN SO EGREGIOUSLY COMPROMISED AT THE STATE LEVEL TO A POINT THAT THE FEDERAL COURT MUST DECLARE ARIZONA'S DISCIPLINARY PROCESS UNCONSTITUTIONAL?

QUESTIONS FOR REVIEW – Continued

5. IS AVAILABILITY OF LEGAL SERVICES TO THOSE WHICH THIS COURT INTENDED TO PROTECT PURSUANT TO *BATES VS. SUPREME COURT OF ARIZONA* ACTUALLY IN A WORSENED STATE REQUIRING RECONSIDERATION OF FIRST AMENDMENT RIGHTS IN THE CONTEXT OF PROFESSIONAL LEGAL SERVICES IN THE ADVERSARY SYSTEM?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari, and for emergency orders granting protection to Petitioners and Real Parties in Interest arising out of the failure of Respondents to observe Federal Constitutional rights of the Petitioners.

STATEMENT OF INTRODUCTION TO REVIEW

Petitioner AXFORD, a long-term employment litigator (representing individual employees) and member in good standing of the Bar of this Court, is being harassed and subjected to unlawful discipline by RESPONDENTS in retaliation for years of successful litigation on behalf of middle-class people. SANCHEZ is a United Parcel Service truck driver with 19 years of service who was assaulted at work and, after contacting over 60 Arizona licensed attorneys, was unable to obtain affordable legal representation, entered Arizona courts ***pro se*** and asked AXFORD to assist him. The STATE BAR OF ARIZONA and the STATE BAR FOUNDATION are two separate non-profit associations. The STATE BAR OF ARIZONA is utilized by the SUPREME COURT OF ARIZONA as the prosecutorial arm in licensure, testing, and discipline of lawyers licensed to practice in the Arizona courts. The STATE BAR FOUNDATION is a financial arm and acts in unclear relationship to practitioners, the court and the public. Petitioner requests reconsideration of the Court's decision of *Bates vs. The State Bar of Arizona*; it has led to unavailability of affordable, competent and experienced legal counsel in civil rights, employment, and other legal services. AXFORD and SANCHEZ, each proceeding *pro se* in related Maricopa County, State of Arizona, litigation

have been prevented from exercising rights of religion, speech and association, due process guaranteed pursuant to state and federal labor laws.

ORDER BELOW

The Judgment and Order of the Supreme Court of Arizona was dated October 31, 2002.

STATEMENT OF THE BASIS FOR JURISDICTION

The Arizona Supreme Court entered an Order requiring AXFORD to pay Five Hundred Dollars. She has paid the amount. Jurisdiction is conferred with the United States Supreme Court pursuant to 28 U.S.C. Section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Sixth Amendment to the U.S. Constitution:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed which district shall have been previously ascertained by

> law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The Fourteenth Amendment to the U.S. Constitution:

> Sec. 1 . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . .

STATEMENT OF THE CASE

After seventeen years as a loyal and exemplary member of the STATE BAR OF ARIZONA, Petitioner's license to practice law was summarily suspended. In the preceding year, AXFORD had requested the assistance of the STATE BAR OF ARIZONA in providing transitional services. AXFORD had experienced a series of personal and professional conditions necessitating addition of licensed advocates to support the cases in litigation. AXFORD informed the STATE BAR OF ARIZONA, by and through her regional member of its Board of Governors of her medical and other circumstances. AXFORD had exhausted all informal avenues, and turned to the bar association. She had been a member since October 4, 1980, and was a frequent speaker on behalf of the association, generating dollars through continuing education materials and events. The STATE BAR OF ARIZONA not only refused assistance to AXFORD; the proposal placed AXFORD and people served by her practice in danger.

The State of Arizona has, at its very beginnings fervent labor struggles. The Arizona Constitution includes a right to work provision, and the mining, trucking, healthcare and other industries are largely non-union. As a legal advocate, AXFORD had created substantial rights on behalf of individual employees, and had been recognized as an AV-rated sole practitioner in the Martindale-Hubbell Directory, and as one of the best lawyers of America in *Naisef*'s treatise based upon substantial survey.

The organized STATE BAR OF ARIZONA, on the other hand, has as its leadership and ideological center the interests of corporate and other lawyers who typically represent upper and management law practice clients. The STATE BAR OF ARIZONA is a compulsory bar membership, and AXFORD had no choice in joining its membership in order to maintain her license. AXFORD is a Member in Good Standing of the Court's Bar. She has also practiced in the Federal District Court of Arizona, the Federal District Court of Nevada, and the Ninth Circuit Court of Appeals.

AXFORD was approached by many, many people asking her to provide assistance in the writing and understanding of legal situations, especially those involving the employment setting. The PEOPLE OF ARIZONA represent those who have sought and would have received the benefit of AXFORD'S expertise in the absence of the unconstitutional conduct of the STATE BAR OF ARIZONA, the STATE BAR FOUNDATION, and the agents and employees of the SUPREME COURT OF ARIZONA.

Arizona law designates judicial power. There had been legislation governing the practice of law, and it was

eliminated. The STATE BAR OF ARIZONA, the STATE BAR FOUNDATION and the SUPREME COURT OF ARIZONA continue to infringe upon protection of the right to the license to practice law, and have seized the power over AXFORD in furtherance of political/commercial dynamics of the practice of law.

"NAIDA AXFORD" is a brand identification, identified with the protection of rights guaranteed by law, and created by state and federal statute. The arm of state government found in the unlawful exercise of power over lawyers was used to harm, injure and defeat AXFORD and those whose interests she had been known for seventeen (17) years to successfully represent.

REASONS FOR GRANTING THE PETITION

In the course of arguments and briefs to the Court, the STATE BAR OF ARIZONA made factual, legal and philosophical arguments concerning the effect of lawyer advertising upon the public. The Court gave great deference to the scheme of law "clinics" which were promised to proliferate if the ban upon advertisement in the profession was characterized as protected speech.

Like a voice shouting "fire" in a burning building, the loosing forth of brazen representations about legal fees and attorney "power" has kindled razing contempt for what is an important and dignified profession, in the nature of a healing art. Lawyers, our societal equivalent to the medicine of understanding and healing human relationships, are in the public eye as wolves and birds of prey, not as those available to serve.

MARK SANCHEZ is a truck driver who needed to have the availability of affordable counsel when the corporate lawyers moved into quash a protective order he had successfully obtained in the trial court. Instead of representing him as the injured employee, management lawyers launched an attack in false, highly technical trial and pleading, ultimately landing the matter into the SUPREME COURT OF ARIZONA. When unable to find a licensed advocate after contacting dozens of attorneys, SANCHEZ asked AXFORD to simply write. AXFORD was open to the SUPREME COURT OF ARIZONA about her role in writing, and acknowledged her part. The brief was signed by SANCHEZ.

AXFORD was ordered to appear before the SUPREME COURT OF ARIZONA in contempt proceedings arising out the 1997 summary suspension of her license to practice law. By the time of the hearing, March 19, 2002, her health was poor, and she reported to the SUPREME COURT OF ARIZONA her analysis about the STATE BAR OF ARIZONA and illegal, unethical and criminal conduct by the team of prosecutors in the "quasi-criminal" proceedings involving her license. The findings of AXFORD implicated the STATE BAR OF ARIZONA in violations of federal case law, and the principles enunciated in *Bates* as well as *Keller vs. The State Bar of California*. AXFORD was found to be in contempt and was fined. It is from this disciplinary action AXFORD petitions the court.

CONCLUSION

The practice of law and the profession of attorneys is tied to the public safety in the use and availability of legal services in conformance with the principles of our nation. Liberty and justice for all are unavailable if the only claims of interest to the advertising licensed advocates are those which will generate a contingency fee. The design of the regulation of lawyers is integral to the availability of advocates whose licensure is the sole extent of government regulation. Deception about the "clinical" aspects of the practice of law and the effect upon the public has risen to those horribles paraded to the Court by the STATE BAR OF ARIZONA thirty years ago. The part of the regulation of lawyers which is a lawful and non-partisan process separate from private interest and adversarial penetration must be articulated and retained by the Court, and the SUPREME COURT OF ARIZONA ordered to separate entirely from the STATE BAR OF ARIZONA and the STATE BAR FOUNDATION. A fully briefed case will lead the Court to bring the regulation of the legal profession into alignment with the Constitution, and begin to repair damage done to the profession. Petition is hereby made to grant certiorari for full hearing of this claim.

RESPECTFULLY submitted this 24th day of December, 2002.

NAIDA B. AXFORD, ESQ.
1087 East Minton Drive
Tempe, Arizona 85282
(480) 600-4282
Counsel for Petitioner

ORDER IN STATE SUPREME COURT

Naida B. Axford, State Bar No. 6292, was suspended from the practice of law for a period of six months and one day by formal Judgment and Order of this Court dated October 10, 2000.

Ms Axford's license to practice law in the State of Arizona cannot be reinstated except upon application by her in accordance with Rule 71(a), Rules of the Supreme Court, and upon compliance therewith. No such application has been filed in this matter.

By Order to Show Cause dated February 26, 2002, the Court summoned Naida B. Axford, State Bar No. 6292, to appear Tuesday, March 19, 2002, at 1:30 p.m. to show cause, if any, why she should not be held in contempt for violating the Judgment and Order dated October 10, 2000, by ignoring the suspension and by engating [sic] in conduct that amounts to an obstruction of the lawyer disciplinary system, all as reflected in the record before us.

Ms. Axford appeared *pro se* at the appropriate time on the date indicated. The State Bar appeared and was represented by counsel. A panel of the Court consisting of Chief Justice Charles E. Jones, Vice Chief Justice Ruth V. McGregor, and Justice Thomas A. Zlacket heard the arguments and has considered the matter.

After reviewing the record of the Disciplinary Commission, including the Findings of Fact, and Report of Hearing Officer 9X, and having heard oral argument by ms. Axford and by counsel for the State Bar, Ms. Axford having made admissions and acknowledgements with respect to her unauthorized practice of law, the Court has reached a decision and issues the following Order.

NOW THEREFORE,

IT IS ORDERED holding Naida B. Axford in contempt of this court for having engaged in the practice of law in violation of this Court's Judgment and Order dated October 10, 2000.

IT IS FURTHER ORDERED imposing upon Naida B. Axford a sanction in the amount of $500.00 payable upon her receipt of this Order to the Clerk of the Supreme Court of Arizona.

IT IS FURTHER ORDERED consistent with Ms. Axford's express avowal to this Court, that Ms. Axford henceforth will comply in full with the Judgment and Order of October 10, 2000. In the event she fails to comply, Ms. Axford faces the risk of greater penalties including disbarment and such additional sanctions as the Court may deem appropriate.

DATED this 25th day of March, 2000.

(signed)
Charles E. Jones
Chief Justice

(and further "Judgment and Order" issued by the Clerk of the Court)

This matter having come on for hearing before the Disciplinary Commission of the Supreme Court of Arizona, it having duly rendered its decision and no discretionary or *sua sponte* review occurring.

IT IS ORDERED ADJUDGED AND DECREED that **NAIDA B. AXFORD**, a suspended member of the State Bar of Arizona, is hereby suspended from the practice of

law for a period of one year, effective the date of this Judgment and Order, for conduct in violation of her duties and obligations as a lawyer, as disclosed in the Commission Report attached hereto as Exhibit A.

IT IS FURTHER ORDERED Respondent shall pay in full any and all claims paid by the Client Protection Fund, not to exceed the maximum permissible payment of $100,000.00.

IT IS FURTHER ORDERED that Respondent shall comply with all of the provisions of Rule 63, Rules of the Supreme Court of Arizona, including but not limited to Rule 63(a) which requires that Respondent notify all of her clients within ten (10) days from the date thereof, of her inability to represent them and that she should promptly inform this Court of her compliance with this Order as provided in Rule 63(d).

IT IS FURTHER ORDERED that **NAIDA B. AXFORD** shall pay the cost and expenses of these proceedings in the amount of $3,064.98, together with interest at the legal rate from the date of this judgment.

DATED this 31st day of October, 2002.

(signed)
NOEL K. DESSAINT, Clerk

BEFORE THE DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **NAIDA B. AXFORD, Bar No. 006292** RESPONDENT.	No. 00-1920 **DISCIPLINARY COMMISSION REPORT** (Filed Jul. 15, 2002)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on June 15, 2002, pursuant to Rule 53(d), Ariz. R. S. Ct., for consideration of the Hearing Officer's findings of fact, conclusions of law and recommendation field April 1, 2002, providing for a one-year suspension and costs.

Decision

The Commission's standard of review is set forth in Rule 53(d)2, which states that the Commission review questions of law *de novo*. In reviewing findings of fact made by a hearing officer, the Commission applies a clearly erroneous standard.

Therefore, having found no findings of fact clearly erroneous, the seven[1] members of the Commission unanimously

[1] Commissioners Bowman and Carson did not participate in these proceedings. Commissioner Funkhouser recused. Daisy D. Gilker, an attorney from Globe, participated as an ad hoc member.

recommend adopting and incorporating by reference the Hearing Officer's findings of fact, conclusions of law, and recommendation[2] for a one-year suspension[3] and costs of these disciplinary proceedings.

RESPECTFULLY SUBMITTED this 15th day of July, 2002.

/s/ Peter J. Cahill/ps [sic]
Peter J. Cahill, Vice Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 15th day of July 2002.

Copy of the foregoing mailed
this 16th day of July 2002, to:

Geoffrey M. T. Sturr
Hearing Officer 8X
2929 North Central, Suite 2100
P.O. Box 36379
Phoenix, AZ 85067-6379

Naida B. Axford
Respondent
C/o g. Carter
Two North Central Avenue
Phoenix, AZ 85004-2393

and

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[2] Great weight is to be given to the recommendations of the hearing officer. *Matter of Owens,* 182 Ariz. 121, 126, 893 P.2d 1284 (1995).

[3] The Commission recommends that upon application for reinstatement, the Respondent shall undergo an independent medical evaluation.

Naida B. Axford
Respondent
1087 East Minton Dr.
Tempe, Az 85282

BEFORE A HEARING OFFICER

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **NAIDA B. AXFORD,** Bar No. 006292 Respondent.	No. 00-1920 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS OF HEARING OFFICER 8X** (Filed Apr. 01, 2002)

PROCEDURAL HISTORY

1. On April 17, 2001, the Probable Cause Panelist of the State Bar issued a Probable Cause Order.

2. A formal complaint was filed on April 25, 2001. The complaint alleges that Respondent was suspended from the practice of law on February 11, 1997, pursuant to Supreme Court Order No. SB-97-0009-D, for failing to comply with mandatory continuing legal education requirements, and that Respondent was subsequently suspended from the practice of law for six months and a day on October 10, 2000, after a disciplinary proceeding, pursuant to Supreme Court Judgment and Order No. SB-00-0068-D (Disciplinary Commission Nos. 92-1612, 95-0052, 96-0512, and 96-3139). Count One of the Complaint alleges that Respondent engaged in the practice of law in or about January 2000 while suspended from the practice of law pursuant to Order No. SB-97-0009-D, and then failed to cooperate with the State Bar's investigation of her conduct, in violation of ER 3.4(c), ER 5.5(a), ER 8.1(b), ER 8.4(d), and Supreme Court Rules 51(e), (f), (h) and (k).

Count Two identified the Judgment and Order in SB-00-0068-D as prior discipline that may be considered following a decision on the merits, pursuant to Rule 53(c) and Rule 54(k)(4), Ariz.R.S.Ct.

3. On May 17, 2001, Respondent, appearing pro se, filed a response to the complaint, captioned "Response and Claims," which denied some allegations and admitted others, raised certain affirmative defenses, and purported to assert claims against the State Bar.

4. The matter was assigned to this Hearing Officer on May 3, 2001.

5. By Order dated May 31, 2001, the Hearing Officer scheduled a telephonic prehearing conference for August 22, 2001 and a hearing for September 19, 2001.

6. On July 26, 2001, Respondent filed a "Motion for Extension and Request for Counsel," seeking to extend indefinitely the deadlines set forth in Rule 53(c), Ariz.R.S.Ct., and to have counsel appointed to represent her in this proceeding. The Hearing Officer denied the motion in an Order dated August 20, 2001.

7. A telephonic prehearing conference took place on August 22, 2001. The State Bar was represented by Loren Braud. Respondent appeared pro se. After hearing argument from both parties on Respondent's July 26, 2001 motion, the Hearing Officer reaffirmed his decision to deny the motion. The Hearing Officer also ordered Respondent to serve a disclosure statement by September 5, 2001, and reset the hearing for October 25, 2001.

8. On October 17, 2001, the State Bar moved to continue the hearing to allow the State Bar to initiate contempt proceedings with the Arizona Supreme Court

based on the Order in No. SB-97-0009-D and Respondent's conduct during the discovery process in this proceeding, and to request a stay from the Disciplinary Commission. As the State Bar noted in that motion, "[u]pon reviewing the history of this matter, and Respondent's profound contempt for the discipline process, the Bar has determined that before proceeding with discipline, contempt proceedings should be commenced before the Supreme Court relative to Respondent's violation of the Supreme Court's Order of Suspension.... Depending on the outcome of contempt proceedings before the Arizona Supreme Court, these discipline proceedings may or may not be necessary." By Order dated October 23, 2001, the Hearing Officer granted the motion, resetting the hearing for November 16, 2001.

9. On October 24, 2001, the State Bar filed with the Arizona Supreme Court a Petition for Order to Show Cause Re Contempt (Supreme Court Nos. SB-97-0009-D and SB-00-0068-D (Disciplinary Commission Nos. 92-1612, 95-0052, 96-0513, and 96-3139) and State Bar No. 00-1920) (the "Contempt Proceeding"). To the Hearing Officer's knowledge, the State Bar did not request that the Disciplinary Commission stay this proceeding.

10. On November 14, 2001, the Supreme Court assigned the Contempt Proceeding to Hearing Officer 9X.

11. Shortly before the scheduled November 16, 2001 hearing in this matter, the Hearing Officer was advised during a telephonic conference with the State Bar, represented by Mr. Braud, and Respondent that the parties wished to have the hearing continued so that a settlement conference could be held in accordance with Rule 53(c)(5), Ariz.R.S.Ct. The Hearing Officer agreed to reschedule the

hearing. By Order dated November 19, 2001, the Hearing Officer ordered the parties to exchange lists of witnesses and exhibits by January 9, 2002, to file pre-hearing memoranda and any pretrial motions by January 16, 2002, to appear for a pre-hearing conference on January 23, 2002, and to appear for a hearing on January 30, 2002.

12. On November 26, 2001, Settlement Officer 8S noticed a settlement conference for January 8, 2002.

13. On December 6,2001, Hearing Officer 9X conducted a hearing in the Contempt Proceeding, and issued his Findings of Fact and Report on December 18, 2001.

14. The State Bar filed a motion in limine on January 4, 2002, seeking to preclude Respondent from offering any evidence at the January 30, 2002 hearing, pursuant to Rule 54(c)(4), Ariz.R.S.Ct. and Rule 37(b), Ariz.R.Civ.P., because of Respondent's alleged failure to comply with the disclosure and discovery obligations set forth in Rules 26.1 and 30, Ariz.R.Civ.P. That motion superseded a motion in limine filed by the State Bar on November 13, 2001. Respondent did not file a written response to the motion.

15. At the January 8, 2002 settlement conference, the State Bar, through Mr. Braud, appeared, but Respondent did not appear. Settlement Officer 8S attempted, without success, to reach Respondent by telephone. Settlement Officer 8S, in a Minute Entry dated January 9, 2002, referred the matter to this Hearing Officer for further proceedings.

16. On January 15, 2002, Respondent filed a Motion to Reschedule Settlement Conference. The State Bar filed a written response to the motion on January 18, 2002.

17. A prehearing conference was held before the Hearing Officer on January 23, 2002. Mr. Braud appeared on behalf of the State Bar. Respondent appeared, pro se. During the conference, the State Bar stated that, it intended to proceed with this proceeding, because the Supreme Court had not yet issued a ruling in the Contempt Proceeding. The Hearing Officer noted that it had received a copy of Respondent's Motion to Reschedule Settlement Conference, stating that, to the extent Respondent sought to postpone the scheduled January 30, 2002 hearing, the Hearing Officer would not grant such an extension. Respondent stated that she was not seeking a postponement of the hearing. The Hearing Officer then heard argument on the State Bar's motion in limine. During that argument, Respondent stated her intention to leave the conference because of the Hearing Officer's alleged bias. Before Respondent left this conference, the Hearing Officer granted in part and denied in part the state Bar's motion, ruling that Respondent would be precluded from calling any witnesses at the hearing or from offering exhibits that had not been previously disclosed (including those witnesses disclosed for the first time by Respondent on January 21, 2002), but that Respondent was otherwise free to present evidence at the hearing. Despite the Hearing Officer's request that Respondent remain at the conference to discuss procedures for the hearing, Respondent left the conference before it concluded. In her absence, the Hearing Officer stated his intention to have the parties make brief opening statements at the hearing and to submit, in lieu of closing arguments, written post-hearing memoranda. The Hearing Officer did so after reviewing the transcript of the December 6, 2001 hearing before Hearing Officer 9X in the Contempt Proceeding, in which Respondent made an

extensive "opening statement" and then declined to participate further in that hearing. The matters addressed during the conference were summarized by the Hearing Officer in an Order dated January 24, 2002.

18. On January 28, 2002, Respondent filed a "Motion to Recuse and Trial Memo" in which she moved that the Hearing Officer recuse himself because of alleged "(1) [p]artisanship, (2) [a]dvocacy, and (3) [i]ntent to [c]ause [p]hysical/[p]sychological [i]njury." Among other things, Respondent objected to the manner in which the Hearing Officer had presided over oral argument on the State Bar's Motion in Limine and the Hearing Officer's decision to have the parties submit written post-hearing memoranda in lieu of closing arguments. The State Bar filed a written response to the motion on January 30, 2002.

19. A hearing was held before the Hearing Officer on January 30, 2002, beginning at 9:00 a.m. Mr. Braud appeared on behalf of the State Bar. Respondent appeared pro se. At the outset of the hearing, the Hearing Officer stated that he had considered and denied respondent's Motion to Recuse. The Hearing Officer stated, however, that in light of Respondent's objections to the Hearing Officer's proposed format for the hearing, he would hear oral closing arguments in addition to receiving written post-hearing memoranda. The parties then made brief opening statements. In its case, the State Bar offered twenty-five exhibits, all of which were admitted into evidence. It then called Respondent to testify. Respondent after being sworn, answered questions from Mr. Braud. Respondent then testified on her own behalf. Following a lunch break, the parties made oral closing arguments and were directed to file written post-hearing memoranda no later than March 1, 2002.

20. The parties' written post-hearing memoranda were received by the March 1 deadline and have been considered by the Hearing Officer.

21. On February 14, 2002, the Arizona Supreme Court issued a notice that it had granted the State Bar's Petition for Order to Show Cause RE: Contempt and that a formal Order would follow.

22. On March 25, 2002, the Supreme Court entered an Order of Contempt following a March 19, 2002 hearing. The Supreme Court found that Respondent was in contempt of the Judgment and Order in No. SB-00-0068-D, imposed a monetary fine of $500, and ordered Respondent to comply fully with that Judgment and Order, noting that "[i]n the event she fails to comply, Ms. Axford faces the risk of greater penalties including disbarment and such additional sanctions as the Court may deem appropriate."

FINDINGS OF FACT

23. Respondent was suspended from the practice of law on February 11, 1997, by Supreme Court Order No. SB-97-0009-D for failing to file an affidavit showing compliance with mandatory continuing legal education requirements. (Hearing Exhibit 1.)

24. Respondent was subsequently suspended from the practice of law for six months and a day on October 10, 2000, after a disciplinary proceeding, pursuant to Supreme Court Judgment and Order No. SB-00-0068-D (Disciplinary Commission Nos. 92-1612, 95-0052, 96-0512, and 96-3139). (Hearing Exhibit 2.)

25. During a July 21, 1998 hearing held in connection with the disciplinary proceeding leading up to the

Judgment and Order in SB-00-0068-D, Respondent testified that the Order in SB-97-0009 was the result of her conscious decision not to comply with the State Bar's compulsory legal education requirements. (Hearing Exhibit 3.) Respondent did so because she "did not want to be associated with the State Bar of Arizona" and believed that the State Bar was "functioning illegally, wrongfully, and against the spirit and intent of the power it's been granted by the Supreme Court of Arizona."

26. Respondent represented Mark Sanchez in or about 1995 in a matter that was apparently concluded before the February 1997 suspension. (Hearing Transcript at 53:7-14.)

27. This disciplinary proceeding involves Respondent's role in an action Mr. Sanchez subsequently brought against his workplace supervisor, John Naugle. The Hearing Officer has taken judicial notice of information available from the Maricopa County Superior court website. He has also reviewed a December 23, 1999 Memorandum Decision of Division One of the Court of Appeals, 1 CA-CV 99-0198, and a January 24, 2000 Petition for Review that Mr. Sanchez filed with the Arizona Supreme Court, No. CV-00-0032-PR. (Hearing Exhibit 4.) From those records, the following chronology emerges:

a. On December 24, 1997, Mr. Sanchez, appearing pro per, brought an action in Maricopa County Superior Court against Mr. Naugle, Case No. CV 97-23719, seeking an injunction to prevent harassment.

b. Mr. Sanchez obtained an ex parte injunction against Mr. Naugle, but the injunction was quashed in or about March 1998, following hearing.

c. Mr. Naugle was awarded his attorneys' fees, which was reduced to a judgment in or about July 1998.

d. Mr. Sanchez filed a notice of appeal in or about September 1998, but did not pay the requisite filing fees and was deemed to have abandoned the appeal.

e. Thereafter, Mr. Naugle sought to garnish Mr. Sanchez's wages to satisfy his judgment for attorneys' fees.

f. A hearing was held in February 1999 at Mr. Sanchez's request. The commisioner [sic] allowed the garnishment, entering a formal order.

g. Mr. Sanchez filed a notice of appeal in or about March 1999.

h. The Hearing Officer has not been provided with a copy of the briefs Mr. Sanchez filed with the Court of Appeals, but it appears from the Court's Memorandum Decision that Mr. Sanchez made a number of arguments, including: *(i)* the res judicata effect of the ruling vacating the injunction; *(ii)* whether he had a right to have the garnishment hearing heard by a judge, rather than a commissioner, of the Superior Court; *(iii)* whether a court reporter should have been supplied at the garnishment hearing; and *(iv)* whether his employer should have provided counsel for him.

i. The Court of Appeals affirmed the trial court's rulings and awarded Mr. Naugle his attorneys' fees, finding that "the appeal lacks merit and that it was motivated, at least in part, by bad faith."

j. On January 24, 2000, Mr. Sanchez filed a Petition for Review with the Arizona Supreme Court which stated that it was written by Respondent.

The contents of the Petition for Review are discussed in detail below.

k. On September 1,2000, the Supreme Court denied the Petition for Review.

l. On September 7, 2000, the Supreme Court referred the Petition for Review to the State Bar, asking that it investigate whether Respondent was practicing law in violation of the Order in SB-97-0009-D.

28. The Petition for Review states on the first page: "Petition written by: NAIDA B. AXFORD, ESQ." Elsewhere on that page is states: "Comes now Petitioner, through writing by NAIDA B. AXFORD, ESQ., (Plaintiff's counsel in *Wagenseller vs. Scottsdale Memorial Hospital,* 147 Ariz. 370, 710 P.2d 25 (1985)), filing this Petition for Review pursuant to Rule 23 of the Supreme Court Rules."

29. Pages 7 and 8 of the Petition for Review contain an extensive quote from what purports to be a request made by Mr. Sanchez to Respondent on or about January 21, and 22, 2002 that Respondent assist him with the Petition.

30. Pages 8 through 10 of the Petition for Review are captioned "Role in Writing for Attorneys," which contains a number of statements by Respondent, including the following: "Over the last several years, I have been teaching Mark about the legal process. He was able to formulate the arguments to the Court, to attend the hearings prepared in the simple skills necessary to accomplish the job of presenting a case."

31. At the hearing, Respondent testified that Mr. Sanchez had "been in contact with me throughout [his

litigation against Mr. Naugle] and what I have done is like explained things, offered what help I could." (Hearing Transcript at 69:24-70:1.)

32. Respondent testified that she wrote the Petition for Review except for the portion attributed to Mr. Sanchez. (Hearing Transcript at 46:24-48:11; 62:5-22.) She also admitted writing the Petition for Review in a facsimile sent to the State Bar on September 28, 2001 (Hearing Exhibit 16), in her October 9, 2001 deposition (Hearing Exhibit 18) and in her January 28, 2002 Motion to Recuse and Trial Memo.

33. Respondent testified that she wrote the Petition for Review because Mr. Sanchez could not find another lawyer, that no one would help him, that he was a fellow Catholic, that she believed she had a "duty, as an officer of the Court, as another human being and as an officer of the legal system and a public citizen having a special responsibility for the granting of justice," and because she "believed my opinion made a difference,. . . . I'm like thinking I'm respected." (Hearing Transcript at 57:5-21.)

34. In addition to addressing the issues raised in Mr. Sanchez' appeal to the Court of Appeals, the Petition for Review raised issues that were of concern to Respondent. For example, page 3 stated, in part,

> ISSUE 6: What do equal protection and due process require in the delivery of County judicial services to guarantee that pro per litigants are treated with dignity, fairness and receive the same treatment as equals with attorneys who are "professionals" and *State Bar members, and how can the judicial personnel (whether Judges,*

> *Pro Tem or Commissioner) cure a conflict of interest created by their membership in the State Bar of Arizona.* (Emphasis added.)

On Pages 10 and 11, the Petition for Review identified as an "important issue of public concern,"

> D. The Origins of the "Professional Bar Association" and its implications regarding the judiciary, the public and the Rules of Civil Procedure, the Rules of Evidence, and the Codes of Professional and Judicial Ethical Responsibilities.

The concluding section of the Petition for Review stated, in part,

> The design of the formal Bar Association needs to be addressed by this Court to remove the appearance of impropriety, increase public confidence in lawyers and return our names to the place of honor so highly esteemed, and difficulty [sic] earned.

35. Respondent testified that when she wrote the Petition for Review she knew she was suspended pursuant to the Order in SB 97-0009-D. (Hearing Transcript at 48:12-49:10.)

36. Respondent denied that she received anything of value from Mr. Sanchez for the services she provided to him in his litigation against Mr. Naugle. (Hearing Transcript at 69:13-28; 76-6-24.)

37. Respondent also denied that she has since the Order in SB 97-0009-D, provided legal services to anyone other than Mr. Sanchez. (Hearing Transcript at 69:19-70:9.)

38. On September 18, 2000, the State Bar, through Lauren Braud, wrote to Respondent at her address of record with the State Bar, enclosing a copy of the Supreme Court's September 7, 2000 letter and the Petition for Review, and requesting that she respond to the charge that she had a violated the Rules of Professional Conduct and the Supreme Court Order in No. SB 97-0009-D. (Exhibit 5.)

39. Respondent requested a 30-day extension to November 13, 2000, but then failed to respond to the State Bar's request. (Exhibit 6.)

40. At the January 30, 2002 hearing, Respondent testified that she responded to the State Bar's inquiries by filing bar complaints against Mr. Braud and Allen Shayo of the State Bar "for the prosecution of a case without full investigation of the facts underlying the case. The wrongful prosecution of a case when the court is in a relationship with a prosecutorial organization that it [sic] ill-defined under law violated the ethical responsibilities of the lawyers who are part of the investigative process." (Hearing Transcript at 51:4-16).

41. On November 30, 2000, the State Bar sent Respondent an additional letter requesting a response within 15 days. (Hearing Exhibit 6.) On December 16, 2000, Respondent faxed a letter (Hearing Exhibit 7) to Bar counsel stating:

> The suspension meted out against me was served during 1997. There was a question about some writing this year. There has been no violation. Responding as a courtesy only.[F1]
>
> [F1]There is no admission of jurisdiction.

42. On December 19, 2000, Bar counsel wrote to Respondent at her address of record stating that her response failed to explain why Respondent's preparation of the Petition for Review and providing legal advice to Mr. Sanchez did not constitute the practice of law in violation of E.R.s 3.4(c), 5.5(a) and Supreme Court Rules 51(e), (f) and 63. (Hearing Exhibit 8.) That letter explained that a suspension is ongoing until the Respondent is reinstated and the Bar's records indicated that Respondent had never been reinstated and was not authorized to practice law at the time the Petition for Review was prepared and filed in Mr. Sanchez's case. That letter gave Respondent an additional 20 days to respond to the substance of the allegations.

43. Respondent then contacted Bar counsel and requested an additional 30 days to respond and requested copies of reference materials defining the unauthorized practice of law. The State Bar responded to that request on January 10, 2001 by providing a copy of the State Bar Consumer Protection Committee report along with copies of 13 cases relating to the issue of the unauthorized practice of law. (Hearing Exhibit 9.)

44. Respondent again failed to respond within the additional time she had requested and on February 14, 2001, Bar counsel sent her yet another reminder notice letter. (Hearing Exhibit 10.)

45. Respondent failed to respond to that letter and a final reminder letter was sent on March 16, 2001. (Hearing Exhibit 11.) Respondent was given additional 15 days to respond to that letter, but Respondent failed to do so.

46. Respondent was served with a formal complaint on April 26, 2001.

47. On or about May 17, 2001, Respondent filed a response to the complaint in a document captioned "Response and Complaints."

48. On May 31, 2001, Bar counsel wrote to Respondent to remind her of the need to serve disclosure statements in connection with the pending disciplinary matter. (Hearing Exhibit 12.) The Bar served its initial disclosure statement on June 4, 2001.

49. Respondent failed to serve a disclosure statement, which was due on June 25, 2001, and on July 10, 2001, Bar counsel wrote to request that she do so. (Hearing Exhibit 13.)

50. On July 26, 2001, Respondent attempted to file a complaint with the Supreme Court of Arizona against Mr. Braud, Mr. Shayo and Hearing Officer Richard Goldsmith seeking an "open hearing" to discuss her complaints. Respondent also filed with the Hearing Officer a "Motion for Extension and Request for Counsel," asking that this disciplinary proceeding be stayed while she pursued her complaint, which the Hearing Officer denied in an Order dated August 20, 2001.

51. Following an August 22, 2001 telephonic prehearing conference, the Hearing Officer, on August 23, ordered Respondent to submit her disclosure statement to the State Bar no later than September 5, 2001.

52. On or about September 5, 2001, Respondent faxed an untitled document to Bar counsel. (Hearing exhibit 14.) The document bore a heading which stated:

> THESE PROCEEDINGS ARE BEING HELD IN VIOLATION OF MY RIGHTS AS A CITIZEN OF ARIZONA, A LICENSED LAWYER, AND IN

> VIOLATION OF MY RIGHTS UNDER THE CONSTITUTION OF THE UNITED STATES OF AMERICA

The caption on that untitled document described the matter as follows:

> IN RE THE MATTER OF A FORMER (UNLAWFULLY) SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA

At the top of each page of the document was written: "SUBMISSION OF THIS PLEADING IS NOT AN ADMISSION OF JURISDICTION."

The concluding paragraph of the document stated:

> SUBMITTED UNDER DURESS, AND WITHOUT WAIVING PERSONAL INJURY AND CONSTITUTIONAL CLAIMS AGAINST THE BAR AND THE INDIVIDUALS PARTICIPATING

The document did not comply with Ariz. R. Civ. P. 26.1 in that it did not include a list of witnesses or a summary of their anticipated testimony and the listing of hearing exhibits was generic in nature and insufficient to allow Bar counsel to prepare for the hearing. Moreover, the document did not disclose material facts relating to the legal services Respondent had provided to Mr. Sanchez.

53. On September 19, 2001, Bar counsel served Respondent with a notice of deposition, setting her deposition for October 9, 2001. At the same time, Bar counsel also wrote to Respondent advising her that her disclosure statement did not comply with rule 26.1 (Hearing Exhibit 15.)

54. On October 2, 2001, Respondent faxed a letter and an untitled disclosure document to Bar counsel. (Hearing Exhibit 16.) In her cover letter, Respondent stated that she was willing to provide the information required to be disclosed under Rule 26.1 through a deposition, "without waiving objections and claims of any kind." At the top of the letter, Respondent wrote:

> NOTICE: THE PROSECUTION OF THIS MATTER IS IN VIOLATION OF THE LAWS OF THE STATE OF ARIZONA AND THE UNITED STATES, AND FURTHERANCE OF THE PROCEEDINGS IS CAUSING IRREPARABLE HARM.

The letter went on to threaten Bar counsel personally:

> ARE YOU AWARE THAT YOU COULD GO TO JAIL FOR THE INTERFERENCE WITH MY AND MARK SANCHEZ'S CIVIL RIGHTS? WE ARE PROTECTED BY TITLE 18 OF THE UNITED STATES CODE.

Respondent wrote in handwriting at the bottom of the letter: "Loren – see 18 USC 241, 242 & *245*." (Emphasis in original.)

55. The untitled disclosure document accompanying Respondent's October 2, 2001 letter stated at the top of the first page:

> THERE IS NO ADMISSION OF JURISDICTION, THIS MATTER IS ILLEGAL, WRONGFUL & HURTFUL. APPEARANCE DOES NOT WAIVE ANY AND ALL LEGAL REMEDIES, CLAIMS AND THE BAR IS REQUESTED TO CEASE AND DESIST.

The disclosure document went on to provide some additional factual disclosures, including an admission that Respondent had written the Petition for Review.

56. Bar counsel wrote to Respondent again on October 4, 2001, requesting a disclosure statement in compliance with Rule 26.1.

57. On October 9, 2001, Bar counsel began taking Respondent's deposition, but Respondent terminated the proceeding after answering a few questions and refused to proceed. (Hearing Exhibit 18.) In stating her intention to terminate the deposition, Respondent stated:

> I am going to make an objection to the furtherance of this deposition. I have a complaint against you, Mr. Brand, and against Mr. Allen Shayo. . . . I've also brought charges against the Bar for sex discrimination, religious discrimination, and discrimination under the Americans with Disabilities Act and in light of the failure of the Bar to treat complaints, equally, to investigate them with equal protection.
>
> And in light of the seriousness of the allegations and the interference with judicial process, the perpetuation of a myth of the validity of the State Bar of Arizona and especially the continuing legal education requirements, so-called requirements, I am going to terminate my participation in the deposition and get a ruling from our Hearing Officer about the furtherance in light of my objections and then we'll go off the record and we can discuss the discovery. (Transcript at 14:6-15:5.)

58. At that point, Respondent handed Bar counsel a paper bag indicating it was a hearing exhibit which should

be kept in the freezer until the hearing. Bar counsel opened the bag and unwrapped a frozen dead rat. Bar counsel returned the rat to Respondent and terminated the discussion.

59. On October 10, 2001, Respondent telephoned Bar counsel to discuss her proposal for a possible resolution of this matter and stated she would follow up with a faxed letter.

60. On October 11, 2001, Bar counsel wrote to Respondent primarily to express concerns for his personal safety after exposure to the dead rat, given Respondent's threats of civil suits and criminal prosecution against him personally and the then recent discovery of anthrax infections in Florida. (Exhibit 19.)

61. Respondent responded to that letter in a facsimile dated October 12, 2001 addressed to Bar counsel but captioned "REPORT TO STATE BAR OF ARIZONA BOARD OF GOVERNORS." (Exhibit 20.) Respondent asserted that she had presented the dead rat to Bar counsel pursuant to Rule 26.1 as she intended to use it as a hearing exhibit to demonstrate that she "smelled a rat" in connection with her suspension for failing to comply with mandatory continuing legal education requirements. That letter continued to threaten Bar counsel, the State Bar and the Supreme Court with personal liability and concluded with the statement that: "*The State Bar of Arizona has until 2:00 p.m. on Friday, October 19th.*" (Emphasis in original.) Although not clearly stated, that deadline appears to have been a demand for Respondent's reinstatement and a dismissal of this proceeding.

62. On October 19, 2001, Respondent filed an amended complaint and application for TRO and Protective Order in

Maricopa County Superior Court No. CV97-23736, *Sanchez v. Naugle, et al.* (Hearing Exhibits 21-24.) That pleading was signed by both Mr. Sanchez and Respondent and sought to enjoin, among others, the State Bar, Bar counsel and arguably, the Supreme Court from conducting:

> any proceedings, investigations, or hearings relating to AXFORD's "Unauthorized practice of law," or requiring her membership in the STATE BAR OF ARIZONA, or contacting her in any way.

Petition for Injunction and Legal Memorandum at 1. Respondent's application also sought a restraining order against John Naugle on behalf of Mark Sanchez. Respondent's pleading also sought un-liquidated special and compensatory damages in the amount of $2.4 billion plus punitive damages. In addition to signing as a co-author, Respondent verified the pleading along with Mr. Sanchez. Respondent faxed copies of those pleadings to Bar counsel on October 22 and October 23, 2001. In her cover letter, Respondent wrote: "The time has passed since I requested reinstatement of my license, and I have moved forward in Maricopa County Superior Court in requesting a Temporary Restraining Order and Preliminary Injunction."

63. According to Maricopa County Superior Court records, Respondent's Application for TRO and Protective Orders were denied on November 2, 2001.

64. On December 6, 2001, Hearing Officer 9X held a hearing in the Contempt Proceeding. According to Hearing Officer 9X's Findings of Fact and Report, "respondent appeared and made an extensive unsworn statement/

argument in which she disputes subject matter jurisdiction and the legality of these proceedings . . .

Respondent did stipulate to the admissibility of the exhibits to the State Bar's Petition. However, she refused to state whether she admitted or denied the factual assertions contained in that Petition. She also refused to testify under oath, and/or to be subject to examination by the State Bar, as she maintains such testimony would be recognizing the jurisdiction and legality of these proceedings."

65. On January 15, 2002, Respondent filed a Motion to Reschedule Settlement Conference. The cover page of that document stated: "PARTICIPATION IN THESE PROCEEDINGS IS SOLELY FOR THE PURPOSE OF DIPLOMACY, AND IS NOT AN ADMISSION OF JURISDICTION." The cover page also stated: "These proceedings are being conducted in violation of state and federal law."

66. On January 28, 2002, Respondent filed a "Motion to Recuse and Trial Memo." The cover page of that document stated: "PARTICIPATION IN THESE PROCEEDINGS IS SOLELY FOR THE PURPOSE OF DIPLOMACY, AND IS NOT AN ADMISSION OF JURISDICTION." The cover page also stated: "These proceedings are being conducted in violation of state and federal law." Among other things the document contains further threats to the State Bar, including the following statements:

> VI. The Actions Of The Officials Of The State Bar Of Arizona In This Matter Have Been Unlawful, Thus Subjecting The Association To Substantial Financial Loss.

VII. Professional Courtesy, Collegiality And The Contractual Duties Owed To Respondent As A Bar Member Would Have In The Very Least Required The Officials Of The State Bar Of Arizona To Respect Respondent's Expertise And Acumen. Failure To Do So Is Evidence Of Sexism, Animosity And Outrageousness Unbecoming Officers Of The Court And Licensed Advocates, Opening This Court And Individual Officers To Liability For Prosecutorial Misconduct, Liability (Criminal And Civil)

67. On March 1, 2002, Respondent filed a post-hearing memorandum captioned "Closing Argument." The document states on its cover page:

> SUBMISSION OF THIS PLEADING DOES NOT ADMIT NOR CONFER JURISDICTION. THIS PROCEEDING VIOLATES STATE AND FEDERAL LAW, BOTH CRIMINAL AND CIVIL; ALL RIGHTS ARE HEREBY RESERVED AGAINST THE COURT, THE STATE BAR, AND ITS VARIOUS OFFICERS.

CONCLUSIONS OF LAW

68. Based on the foregoing, I find that the State Bar has proven, by clear and convincing evidence, its allegation that Respondent, while suspended from the practice of law pursuant to the Order in SB 97-0009D, knowingly practiced law by providing legal services to Mark Sanchez in connection with his litigation against Mr. Naugle and in drafting the Petition for Review that Mr. Sanchez submitted to the Arizona Supreme Court, in violation of ER

3.4(c), ER 5.5(c), ER 8.4(d) and Rules 51(e), 51(f) and 51(k), Ariz.R.S.Ct.

69. I further find that the State Bar has proven, by clear and convincing evidence, its allegation that Respondent knowingly refused to cooperate with and failed to respond to the State Bar's investigation, in violation of ER 8.1(b) and Rules 51(h) and 51(i), Ariz.R.S.Ct.

70. Respondent raises several legal arguments that I find to be without merit.

71. Without citing any legal authority, Respondent has consistently challenged subject matter jurisdiction. That argument was addressed in *Bridegroom v. State Bar*, 27 Ariz.App. 47, 49; 550 P.2d 1089, 10991 (1976), in which the Supreme Court held:

> There is no question but that the Supreme Court has inherent power to integrate the bar of the state.
>
> A state bar association is a sui generis association, many of whose important functions are directly related to and an aid of the judicial branch of government. A state bar has been described as 'an administrative arm' of the Supreme Court.

72. Respondent has also asserted that a mandatory continuing legal education requirement is illegal and that she was suspended in violation of her due process rights. Those arguments were addressed in *In re Smith*, 189 Ariz. 144, 146, 939 P.2d 422, 424 (1997).

73. Respondent argues that the State Bar is "for all intents and purposes a union, and membership of the

union is illegal under the Arizona Constitution." That argument has been rejected by courts outside of Arizona and would no doubt be rejected by our Supreme Court. *See Rosenthal v. Justices of the Supreme Court of California*, 910 F.2d 561 (9th Cir. 1990) *cert denied*, 498 U.S. 1087 (1991); *Matter of Chamley*, 349 N.W.2d 56 (S.D.1984); *Sams v. Ola*, 225 Ga. 497; 169 S.E.2d 790 (1969); *see also* Arizona Atty General Op.I 87-128 (October 16, 1976)

74. Respondent also attacks the validity of the judgment and order in SB-00-0068-D, arguing that the suspension is void because the Hearing Office took more than sixty days to issue a report. That contention is at odds with Rule 56(h) Ariz.R.S.C.

AGGRAVATING AND MITIGATING CIRCUMSTANCES

Aggravating Circumstances

75. I find that a number of aggravating factors are present

76. *Prior disciplinary offenses, ABA Standard 9.22(a)*: Respondent has been twice suspended from the practice of law, in Order No. 97-0009-D and SB-00-0068-D, and has been held in contempt for violating SB-00-0068-D.

77. *Dishonest or selfish motive, ABA Standard 9.22(b)*: While respondent claims that she drafted the Petition for Review because no other attorney would help Mr. Sanchez and because she believed she had religious, moral and professional obligations to help him, I find, from the text of the Petition for Review and her conduct in this proceeding that her conduct has been calculated to serve her own interests.

78. *Pattern of misconduct, ABA Standard 9.22(c)*: I further find that Respondent has engaged in a pattern of misconduct. Beginning with her conscious refusal to file an affidavit showing compliance with legal education requirements which resulted in her 1997 suspension, Respondent has refused and continues to refuse to recognize the Supreme Court's jurisdiction and power to regulate the practice of law.

79. *Bad faith obstruction of the disciplinary process, ABA Standard 9.22(e)*: The record of this proceeding contains overwhelming evidence that Respondent has acted in bad faith in obstructing these proceedings. Respondent has sought unwarranted delays, personally and unnecessarily attacked Bar counsel, failed to comply with disclosure obligations and orders of the Hearing Officer, refused to submit to a deposition, and walked out of a prehearing conference. The incident involving the dead rat deserves special mention as it demonstrates Respondent's utter contempt for the disciplinary process.

80. *Refusal to acknowledge wrongful nature of conduct, ABA Standard 9.22(g)*: Although Respondent states she did not intend to violate or show disrespect for the rules, judges or process, she has refused and continues to refuse to recognize or acknowledge the wrongful nature of her conduct and the jurisdiction of either the State Bar or the Supreme Court.

81. *Substantial experience in the practice of law, ABA Standard 9.22(i)*: Respondent, as an experienced lawyer, is familiar with the disclosure and discovery rules she has openly flaunted.

82. The State Bar argues that ABA Standard 9.22(h), vulnerability of victim, is also implicated in that

"Mr. Sanchez is not sophisticated enough to perceive the harm that Respondent has done and is doing to his case by her continued efforts to represent him." While the Hearing Officer believes Respondent encouraged and assisted Mr. Sanchez in pursuing a frivolous appeal, there is insufficient evidence to establish that Mr. Sanchez was a vulnerable victim within the meaning of Standard 9.22(h).

Mitigating Factors

83. I find that only one mitigating factor, ABA Standard 9.32, personal or emotional problems, is present.

84. Respondent asserted that she suffers from "post-traumatic stress symptoms," but offered no credible evidence in support of that claim. Had such evidence been presented, it would have been precluded based on the Hearing Officer's ruling on the State Bar's Motion in Limine.

CONCLUSIONS AND RECOMMENDATIONS

85. The State Bar has recommended that Respondent be suspended for a period of years. Respondent has asked that the complaint be dismissed and that her license be reinstated.

86. The Hearing Officer has considered other like cases and the *Standards for Imposing Lawyer Sanctions* published by the American Bar Association Center for Professional Responsibility.

87. The Hearing Officer concludes that suspension of the Respondent for a period of one year is an appropriate sanction under these circumstances.

88. One purpose of lawyer discipline is to protect the public and the profession. *In re Stevens*, 178 Ariz. 261, 263, 872 P.2d 665, 667 (1994). Another purpose is "to deter the respondent and other attorneys from engaging in similar unethical conduct." *Id.*

89. Respondent's conduct is governed by ABA Standard 7.0, which addresses violations of duties owed as a professional, including duties owed under ER 5.5 and 8.1. *See In re Taylor*, 180 Ariz. 290, 292, 883 P.2d 1046, 1048 (1994) ("Practicing law while suspended is a violation of the one of the duties a lawyer owes as a professional."); *In re Galusha*, 164 Ariz. 503, 794 P.2d 136 (1990) (failure to cooperate with Bar counsel and respond to requests for information "demonstrates a disregard for the Rules of Professional Conduct and borders on contempt for the legal system.").

90. Standard 7.0 provides for suspension when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. Here, the record shows that Respondent violated ER 5.5 by knowingly practicing law while suspended and that her conduct caused at least potential injury to Mr. Sanchez, who pursued a frivolous appeal to the Arizona Supreme Court, and actual injury to the legal system. *See Stevens*, 178 Ariz. at 263, 872 P.2d at 667 ("The unauthorized practice of law is a serious ethical violation, and one that would usually result in a suspension, at least."). The record further shows that Respondent knowingly violated ER 8.1 by refusing to cooperate with the State Bar's requests for information and that her conduct caused actual injury to the legal system. I therefore conclude that a sanction of suspension is appropriate.

91. As noted above, I found a number of aggravating factors and only one mitigating factor. The most significant of those aggravating factors, at least to this Hearing Officer, are Standards 9.22(e) (bad faith obstruction of the disciplinary proceeding) and 9.22(g) (refusal to acknowledge wrongful nature of conduct).

92. In conducting a proportionality analysis, the following cases were instructive:

a. *In re Savoy*, SB-00-0070-D (Disc. Comm. No. 98-1042) involved an attorney who was sanctioned for preparing a last will and testament for a client while suspended from the practice of law, and then transmitting the documents to devisees from the will under his legal letterhead. He received no compensation for his service, as the client was a longtime friend and was aware of the lawyer's suspension. The Disciplinary Commission accepted an agreement for censure. Standards 9.32(b) and (e) were found in mitigation and the only aggravating factor was prior discipline.

b. *In re Kistler*, SB-00-0098-D (Disc. Comm. No. 97-0634) involved an attorney who was sanctioned for continuing to participate in a court proceeding while on administrative suspension and failing to withdraw from the case or advise his client and the court of his suspension. The Disciplinary Commission accepted an agreement for censure and probation upon reinstatement. The only aggravating factor was the lawyer's substantial experience in the practice of law, while Standards 9.32(a), (c), (e), (g) and (i) were found in mitigation.

c. *In re Stevens*, 178 Ariz. 261, 872 P.2d 665 (1994), involved an attorney who was suspended from practice for failing to comply with the mandatory continuing legal education requirements. After taking steps to have his license reinstated, the attorney made a court appearance and prepared a post-dissolution decree. The Disciplinary Commission accepted an agreement of censure, finding that the attorney did not have a deceptive motive, that he did not have a prior disciplinary history, did not have a dishonest or selfish motive, had immediately responded to the State Bar's inquiry, had shown remorse, and had cooperated fully during the disciplinary proceedings.

d. *In re Larriva*, SB-96-0020-D, (Disc.Comm. No. 92-0558), involved an attorney who was disciplined for knowingly continuing to practice law after being suspended for failing to comply with the mandatory continuing legal education requirement and failing to respond to State Bar inquiries. The sanction imposed by the Disciplinary Commission was a suspension of six months and one day and one year of probation. The lawyer in that case cooperated during formal discovery proceedings and had only one aggravating factor, a prior informal reprimand for failure to cooperate with a disciplinary investigation.

e. *In re Allred*, SG-98-0049-D (Disc.Comm. No. 96-0195), involved a lawyer who was sanctioned for continuing to practice law while suspended for failure to comply with the mandatory continuing legal education requirements and for falsely stating to a Superior Court judge that she had "taken care of her suspension" when she had not. The Disciplinary Commission accepted an agreement whereby the lawyer was retroactively suspended for six months and one day and was

required to prove rehabilitation prior to reinstatement.

f. *In re Prince*, SB-99-0091-D (Disc. Comm. No. 97-2186), involved an attorney who was sanctioned for filing a notice of appearance and substantive pleadings in an attempt to assist a childhood friend with a domestic relations matter pro bono while suspended for nonpayment of dues. The Disciplinary Commission accepted an agreement for a retroactive six-month suspension. The attorney did not have a prior disciplinary record and the only aggravating factor was substantial experience in the practice of law.

g. *In re Pedersen*, SB-98-0051-D (Disc.Comm. No. 96-1535), involved an attorney who was sanctioned for a single instance of practicing law while suspended for failing to pay Bar dues and failing to participate in the disciplinary proceedings. The Disciplinary Commission suspended the lawyer for one year, retroactively.

h. *In re McFadden*, SB-00-0072-D (Disc. Comm. Nos. 99-0724, 99-0974, 99-0-75, 99-1925, 99-1520), involved an attorney who was sanctioned for failing to perform services for which he was retained, failing to communicate or respond to requests for information from clients, failing to return unearned retainers, engaging in the practice of law while suspended for failing to pay dues and comply with mandatory continuing legal education requirements, and failing to respond to or cooperate with the State Bar's investigation. The Disciplinary Commission imposed a sanction of a two-year suspension and restitution upon reinstatement. The only mitigating factor was the absence of a prior disciplinary

record, while Standards 9.22(d), (e) and (i) were found in aggravation.

i. *In re Coburn*, 181 Ariz. 250, 889 P.2d 608 (1995), involved an attorney who engaged in the practice of law after being suspended. The Disciplinary Commission found that in all but one instance, the attorney was winding up his practice at the time he was suspended. The Commission found a number of mitigating factors, including lack of dishonest or selfish motive, full and free disclosure to the State Bar, a cooperative attitude during disciplinary proceedings and remorse. Aggravating factors were a prior extensive disciplinary history and substantial experience in the practice of law. The Commission imposed a sanction of a retroactive two-year suspension.

j. *In re Taylor*, 180 Ariz. 290, 883 P.2d 1046 (1994), involved an attorney who engaged in the practice of law while suspended for nonpayment of Bar dues and failure to comply with the mandatory continuing legal education requirements. He was also charged with failing to act with diligence, failing to maintain adequate communication with his clients, and failing to respond to State Bar inquiries. The Disciplinary Commission accepted an agreement of a three-year suspension, although it observed that the sanction might be unduly harsh.

k. *In re Tarletz*, 165 Ariz. 243, 798 P.2d 381 (1990), is a case in which the Supreme Court affirmed the Hearing Committee's recommendation that a previously disbarred attorney be disbarred for engaging in the authorized practice of law. While the sanction of disbarment is not relevant to the Hearing Officer's conclusion, the Hearing Committee's observations about

the attorney's conduct during the disciplinary process are instructive:

> The file on the subject Complaint . . . may only be fairly described as shocking. It is clearly evident to the Committee that Respondent marches to the beat of a different drummer and cares not about the propriety of her actions, the integrity of the judicial process, the legal profession or the Rules of the Supreme Court of Arizona.
>
> . . . .
>
> Respondent has shown a total disregard for the disciplinary process and the legal profession. Failure to cooperate with disciplinary authorities is a significant aggravating factor in considering proper discipline. *See In re Pappas*, 159 Ariz. 516, 527, 768 P.2d 1161, 1171 (1989).

165 Ariz. at 244, 798 P.2d at 382.

93. For the reasons given above, I do not find that a censure is appropriate, and thus disregard *Savoy, Kistler* and *Stevens*. I find that a sanction more severe than the six-month suspensions imposed in *Larriva, Allred* and *Prince* is appropriate because of the presence of aggravating factors in this case and the absence of the mitigating factors found in those cases. As in *Tarletz*, I find that Respondent's conduct during the disciplinary proceeding is a significant aggravating factor in imposing discipline. *McFadden, Coburn* and *Taylor* suggest that a suspension for a term of two or more years is excessive, since those cases involved misconduct in addition to the unauthorized practice of law. I therefore conclude that a suspension of one year is appropriate.

94. Based upon the foregoing, the undersigned recommends that Respondent be suspended for a period of one year, and that Respondent be ordered to pay all costs incurred by the State Bar in these proceedings.

DATED this 1st day of April 2002.

/s/ Geoffrey M.T. Sturr
Geoffrey M.T. Sturr
Hearing Officer 8X

Original of the foregoing mailed/faxed
this 1st day of April, 2002, to:

Disciplinary Clerk of the
Supreme Court of Arizona
1501 West Washington
Phoenix, Arizona 85007-3329

Copies of the foregoing mailed
this 1st day of April, 2002, to:

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Bar Counsel

/s/ Susanne Wedemeyer